

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Malik Laughlin, et al.,

Case No. 19-cv-2547 (ECT/TNL)

Plaintiffs,

v.

REPORT & RECOMMENDATION

James Stuart, et al.,

Defendants.

Malik Laughlin, OID #259995, MCF-Rush City, 7600 525th Street, Rush City, MN 55069; Kenneth Lewis, Sherburne County Jail, 13880 Business Center Drive, Elk River, MN 55330; and Michael Hari, Sherburne County Jail, 13880 Business Center Drive, Elk River, MN 55330 (pro se Plaintiffs);

Robert I. Yount, Assistant Anoka County Attorney, Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303 (for Defendants James Stuart, Jonathon Evans, Lt. Sheila Larson, Sgt. Carrie Wood, and Jesse Rasmussen); and

Gary K. Luloff and Jennifer J. Crancer, Chestnut Cambronne PA, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401 (for Defendant Tessa Villegas).

This matter is before the Court on Defendant Tessa Villegas's ("Villegas") Motion to Dismiss (ECF No. 248). This motion has been referred to the undersigned for a report and recommendation to the district court, the Honorable Eric C. Tostrud, District Judge for the United States District Court for the District of Minnesota, under 28 U.S.C. § 636 and D. Minn. LR 72.1.

Since the filing of this motion, the Court granted Plaintiffs' motion for leave to amend their Amended Complaint. (ECF No. 303.) Plaintiffs then filed a Second Amended Complaint. (ECF No. 311.) In response, Villegas filed a motion to dismiss the now

operative Second Amended Complaint. (ECF No. 321.) She has not withdrawn her original motion to dismiss.

“Ordinarily the filing of an amended complaint renders moot a Rule 12(b)(6) motion to dismiss the original complaint.” *Crandall v. Miller & Stevens, P.A.*, No. 20-cv-1793 (ECT/LIB), 2020 WL 6158214, at *2 (D. Minn. Oct. 21, 2020) (citing *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002)). On occasion, particularly where the parties agree to the approach, a court will construe a pending motion as the motion to dismiss the amended complaint. *See Manos v. Fed. Bureau of Prisons*, No. 18-cv-427 (PJS/HB), 2019 WL 1494604, at *2 (D. Minn. Mar. 11, 2019), *report and recommendation adopted*, 2019 WL 1491789 (D. Minn. Apr. 4, 2019).

The record supports denying Villegas’s original motion as moot and proceeding on her more recent motion. Villegas would not be prejudiced by the denial of the original motion, as she has already filed second motion to dismiss in response to the now-operative complaint. (ECF No. 321.) The motion has been fully briefed for the Court’s review. (*See, e.g.*, ECF Nos. 323, 339, 349.) The Court finds that denying the original motion as moot is the best course of action for this case.

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Therefore, based upon the record, memoranda, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** Defendant Tessa Villegas’s Motion to Dismiss (ECF No. 248) be **DENIED AS MOOT**.

Date: July 26, 2021

s/Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).